(2004) 09 PAT CK 0040

In the Patna High Court

Case No : Criminal Miscellaneous No. 25025 of 2002

Shankar Kumar Verma @ S.K.Verma APPELLANT

Vs

The State of Bihar and Another RESPONDENT

Date of Decision : 18-09-2004

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2005) 1 PLJR 303

Hon'ble Judges : P.K. Sinha, J

Bench : Single Bench

Advocate : Rakesh Kumar, for the Appellant; Chandasen Pd. Singh, M/s K.P. Yadav and Suresh Kumar for Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

P.K. Sinha, J.—This is an application u/s 482 of the Code of Criminal Procedure praying therein to quash order dated 15.4.2001 recorded by Chief Judicial Magistrate, Rohtas at Sasaram in Official Case No. 11 of 2001 whereby the learned Magistrate had taken cognizance of offence u/s 48 of the Bihar Agricultural Produce Markets Act (The Act'', in short) as well for quashing the entire proceeding in the aforesaid case, as well for quashing order dated 1.12.2001 recorded by the Sessions Judge, Rohtas in Revision Case No. 203 of 2001 wherein the aforesaid order dated 15.4.2001 recorded by learned Chief Judicial Magistrate was affirmed. The petitioner, during the relevant time was Superintendent of Railways at Sasaram. He was issued a letter by the District Magistrate dated 12.3.2001 referring to an earlier letter dated 7.3.2001 requiring the Station Superintendent to furnish the name and address of the person who had booked bags of rice for transportation by the railways, informing that the sending of the same was stopped. The Railway Superintendent, who is the petitioner and who was made accused in the consequent complaint, was permitted to have the rice transported if relevant papers, including for payment of the market cess, were shown to him. The allegation in the complaint was that the Railway Superintendent had caused the rice to be dispatched through railway wagons, and sanction for his prosecution u/s 48 of the Act was granted by Raj Kumar Yadav, the Secretary of the Market Committee at Sasaram.

2. Learned counsel for the petitioner has advanced his arguments on twin planks, namely,-

(1) Sanction order was vitiated because the Secretary had granted sanction who himself was prosecutor who had filed the complaint in the same capacity; and

(2) The Station Superintendent is not an authority to ensure collection of the market cess from the goods that are booked for transportation through railway goods and is duty bound to transport the goods if the formalities under the relevant law and Rules were performed.

3. Learned Additional Public Prosecutor, representing State of Bihar, as well the District Magistrate, Rohtas at Sasaram, supported the order of taking of cognizance and prosecution against the petitioner.

4. Learned counsel for opposite party No. 2, Raj Kumar Yadav, the Market Secretary, was also heard. Since all the parties have been heard, this application is being disposed of at this stage.

5. In so far as the first argument is concerned, learned counsel for opposite party No. 2 admitted that u/s 49(2) of the Act a court is barred from taking cognizance of contravention of the provisions of the Act, Rules or bye laws or of any order made there under except with previous sanction of the authority prescribed in that behalf. Rule 132 deals with the authorities who are empowered to sanction prosecution, namely, the Market Committee itself, or the Assistant Director or Director or any Officer authorised by him. It is not disputed that by a subsequent amendment the Secretary of the Market Committee also was empowered to grant sanction for prosecution.

6. The sanction order, which is Annexure-2 to the petition, does not show that the Secretary was, while granting sanction, acting upon the orders of the Market Committee or any of the superior officers who were also empowered to grant sanction. From a perusal of the sanction order it will be apparent that the Secretary, in his own capacity, had considered the matter for grant of sanction and had granted sanction where after he himself filed the complaint.

7. Grant of sanction for launching a prosecution against a person is not an empty formality to be undergone casually just for the sake of fulfilling a requirement of law. Such order should be objective one, considering the materials on record as also as to whether, even if some minor offence was made out, it was expedient to grant sanction in particular circumstances of a case. The Secretary to the Market Committee, who was also entitled to file the complaint, should not have taken upon himself the burden of granting sanction even if he was one of the officials empowered to grant that. When the Market committee or superior officers were competent to grant sanction, the matter of sanction should have

been considered by them since the Market Secretary had intended to file the complaint. Serious doubts may be raised about the objectivity of the sanction if the same person was launching the prosecution and was to appear in the case as a witness. Such sanction cannot be said to be proper in the eye of law.

8. In so far as the other point is concerned, the learned counsel for opposite party No. 2 submitted that since the petitioner had contravened provision u/s 31-C(3) of the Act, he was liable to punishment u/s 48 of the Act. Section 31-C(3) runs as follows:-

"31-C(3). No person shall remove or cause to be removed or transport any goods unless market fee payable under the Act has been paid or realised. Any vehicle or conveyance and the owner or the driver of the person in charge of the vehicle or the conveyance shall carry with himself a document showing the payment of market fee on such produce having been paid or realised or charged by the trader or by the staff of the Market Committee."

9. Other provisions of section 31 -C are also important as this provision empowers any officer or servant of the Market Committee or the Board, when so required, to stop any vehicle, vessel or other conveyance and to keep it stationary in order to examine the contents of the aforesaid conveyance to see if any agricultural produce was being carried out by any such conveyance and also has power to seize any notified agricultural produce under the circumstances mentioned u/s 31-C(2) of the Act. Rule 82 of the Bihar Agricultural Produce Markets Rules, 1975 provides as to at what rate the agricultural produce could be levied and how market fee could be collected as well the authorities who could do that. Obviously, Station Superintendent is not one of those Officers so authorised, if any Notified Agricultural Produce is likely to be transported without payment of the market fee, the concerned official is empowered not only to seize the agricultural produce but also to remove the stock under the provisions of section 31-C(4) of the Act. Annexure 2 only suggests that the rice kept in bags in the railway premises were stopped from being transported in absence of receipt showing such payment. This order does not say, nor the sanction order at Annexure-3 does show, that those rice bags were seized. It was in this context that it was argued by the learned counsel for the petitioner that the authorities of the Market Committee instead of doing their work and exercising their powers, which they were empowered to do, and without seizure of the goods had asked the Station Superintendent to make sure that the market fee was paid which was not a duty assigned to him under the Act.

10. It was argued that goods are transported by the railways under the law and Rules framed in that regard and if those laws and Rules are not violated, as there is no allegation to that effect, an Station Superintendent, through which the goods may pass or such Station Superintendents of Stations through which Station the goods may pass in transit cannot be held responsible for committing the offence under the Act.

11. The arguments of the learned counsel for the petitioner on the two points taken up by him have force, and have to be accepted. In that view of the matter, the impugned orders of the courts below as well the criminal prosecution against the petitioner are hereby quashed.

